IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 689 34

TIMES FILM CORPORATION,

Petitioner,

v.

CITY OF CHICAGO, RICHARD J. DALEY and TIMOTHY J. O'CONNOR,

Respondents.

BRIEF AMICUS CURIAE FOR INDEPENDENT FILM IMPORTERS AND DISTRIBUTORS OF AMERICA, INC. AND MOTION FOR LEAVE TO FILE BRIEF

MICHAEL F. MAYER
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SPRING AND MAYER
Of Counsel

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Motion of Independent Film Importers and Distributors of America, Inc. for Leave to File Brief as Amicus Curiae

Independent Film Importers and Distributors of America, Inc. (herein called IFIDA) respectfully moves this court for leave to file a brief in this case as amicus curiae. The consent of the attorney for the petitioner herein has been obtained, but the attorney for the respondents has refused to consent in writing to the filing of a brief by IFIDA as amicus curiae.

The applicant has a substantial interest in this case. It is a trade association comprising a substantial majority of the importer-distributors of for-

eign motion pictures into the United States. Our members are intimately concerned with the problems of regulation and censorship of motion pictures which are posed on this appeal. Their motion pictures are subjected to regulation under the Chicago ordinance and under other statutes and ordinances of similar import. In this particular case the motion picture involved is a foreign motion picture. The clarification of the question of the legality of prior censorship is of direct and vital importance to our members.

A major issue of peculiar importance to applicant was not dealt with by petitioner in its brief in the Court of Appeals. Nor do we expect that it will be dealt with by petitioner in its brief to this court. This is the relationship between federal customs regulation of imported motion pictures and local censorship under the constitution. This issue is discussed in our proposed brief amicus curiae. If the court approves our argument the decision of the court below should be reversed.

It is therefore respectfully requested that IFIDA be granted leave to file a brief amicus curiae.

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BRIEF AMICUS CURIAE FOR INDEPENDENT FILM IMPORTERS AND DISTRIBUTORS OF AMERICA, INC.

Statement

This brief Amicus Curiae is submitted on behalf of the Independent Film Importers and Distributors of America, Inc. (hereinafter called "IFIDA"). This organization represents a majority of the importers and distributors of foreign films in the United States. It has a special interest in the problems presented on this petition because its motion pictures, among others, are subject to the pre-censorship provisions of the Chicago ordinance as well as other such statutes and ordinances throughout the land.

The facts of this proceeding are, we believe, fairly stated in petitioner's brief and we do not wish to burden the Court with an additional recitation.

The Issues

1. Is the censorship ordinance of the City of Chicago invalid per se as a prior restraint on free speech under the First and Fourteenth Amendments to the Constitution.

2. May foreign motion pictures imported into the United States and subjected to inspection for obscenity under the Federal Customs Law, be Constitutionally subjected to additional regulation under Chicago's licensing ordinance.

POINTS

I

The guarantee of free expression in the First Amendment to the Constitution is the basic guarantee of a free society. To subject any medium of expression to a requirement of pre-censoring before public showing or publication is contrary to the Constitution.

The motion pictures distributed by the members of IFIDA come from all quarters of the globe. They represent the expressions and ideas of film makers everywhere. It is true that some of the ideas and expressions contained in them are controversial. It is true that some of the ideas and expressions contained in them are contrary to the concepts of some Americans. It is true that in their mode of expression some individuals may find matter objectionable to them.

But the critical factor is that these are expressions entitled, as are expressions in all other media, to the full freedom of the market place of ideas. When these

ideas are obscene, they may be dealt with within the traditional framework of the judicial process. This restraint follows exhibition (or publication) and does not come before. To deny the right to exhibit in advance without censorship is to affirm for motion pictures a restriction we believe unlawful in any other expression of speech.

We are convinced that foreign motion pictures have an important message for America. They tell of the customs, the cultures, the hopes and the dreams of peoples of other lands. We do not acclaim their superior virtues as such, but we submit that in the market place of free ideas it is the essence of democracy that they should not run the risk of suppression prior to showing. This is what we believe to be the un-Constitutional vice of the Chicago ordinance. It authorizes and, in fact, requires, a pre-submission of content before a film can be publicly shown, and if that content displeases the censors for any reason within the scope of the ordinance, that film may be banned and prevented from ever being shown. It is undeniable that this is a prior restraint of a most arbitrary character. It is the same type of prior restraint that since the classic case of *Near* vs. *Minnesota,* 283 U. S. 697 (1935) this Court has repeatedly condemned in all other media. We submit that there is no good reason to support this distinction. Pre-censorship should be equally invalid in this area as in any other area. The First Amendment and the Fourteenth Amendment should not be held to differentiate between varying methods of expression. We ask this Court to reverse this decision and to find that motion pictures are entitled, not to partial rights, not to half-way privileges, but to the full freedom of speech guaranteed by the Constitution.

II

Foreign motion pictures have been previously adjudged for obscenity by the United States Customs before entry into the United States. There can therefore be no constitutional justification for a further requirement of municipal pre-censorship.

Under the doctrine of the various motion picture cases decided by this Court in recent years the powers of local censors have been repeatedly limited. See, e. g., *Burstyn* vs. *Wilson*, 343 U. S. 495 (1952); *Kingsley International Pictures Corporation* vs. *Board of Regents*, 360 U. S. 684 (1959). A host of criteria have been demolished by the courts as proper standards. Today the sole significant lingering standard is obscenity. This is now the entire thrust of the existing censorship pattern.

Under Title 19 U. S. Code Annotated, Section 1305, all persons are prohibited from importing into the United States from any foreign country any "obscene" picture or other article which is "obscene or immoral." Similarly, under Section 1462 of Title 18 of the U. S. Code Annotated, the bringing into the United States of an obscene motion picture film is a criminal act. It is clear, therefore, that obscene matter including film cannot lawfully be imported into the United States and that those who do import it are subject to criminal penalties. No foreign film can reach this shore without passing the authority of Customs.

We submit that these requirements are more than a sufficient guard against the unwarranted fears of

obscenity from abroad if prior censorship is abolished. The very purpose for which censorship laws are applied to foreign films has already been predetermined by Federal authority. Certainly, the insistence on numerous clearances for foreign motion pictures is unreasonable.

The Constitution holds that, in the Federal sphere, the acts of the Federal Government are supreme. This Court has repeatedly and recently construed the Constitution to prevent joint application of Federal and State legislation particularly where there is a danger of duplicate penalties and a clear Federal preemption of the field. See *Pennsylvania* vs. *Nelson*, 350 U. S. 497 (1956); *Garner* vs. *Teamsters*, 346 U. S. 485 (1953); *Hines* vs. *Davidowitz*, 312 U. S. 52 (1941). As the Customs statutes cited above indicate, obscene motion pictures may be and are barred from entering this country under Federal regulatory procedures. This being so, we contend that, under the cases, the States and municipalities should not be entitled to censor foreign films where the Federal Government has already occupied the field, particularly in an area where the Federal Government's superiority cannot be denied.

Accordingly, we ask this Court to rule that motion pictures imported from aboard, such as "Don Juan" should not be subjected to dual determination as to obscenity and that, by its application thereto, Chicago's ordinance is unconstitutional.

Conclusion

We believe that motion pictures are entitled to be entirely free from censorship like other media of expression under the First and Fourteenth Amendments. In any event, we submit that the Federal Government, having occupied the field of import regulations for foreign films, under the Constitution, these films may not be thereafter subjected to municipal censorship.

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